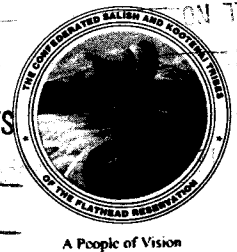


A Confederation of the Salish,
Upper Pend d'Oreilles
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE Jan. 7, 2009
BILL NO. SB 39



TRIBAL COUNCIL MEMBERS:

James Steele Jr. – Chairman
E.T. "Bud" Moran – Vice Chair
Steve Lozar – Secretary
Jim Malatare – Treasurer
Joe Durglo
Carole Lankford
Michel Kenmille
Reuben A. Mathias
Charles L. Morigeau
Terry L. Pitts

SENATE BILL 39
2009 MONTANA LEGISLATIVE SESSION

To: Chairman Kelly Gebhardt and Senate Natural Resources Committee Members

From: John Carter, Confederated Salish and Kootenai Tribes, Tribal Attorney
(406) 675-2700, ext 1164; pamm@cskt.org

PURPOSE OF SENATE BILL 39

The Montana Reserved Water Rights Compact Commission will sunset in June 2009. This bill does two things. First, it will amend the Water Use Act by extending the life of the Commission for an additional four years. Second, it will extend the time for Tribes to file their water rights claims, if negotiations end unsuccessfully, from six to sixty months. The Confederated Salish and Kootenai Tribes urge the Committee to pass Senate Bill 39.

BACKGROUND

A. The Montana Reserved Water Rights Compact Commission was created in the 1979 Legislative Session to negotiate rather than litigate the federal reserved and aboriginal water rights of Indian Tribes and the reserved rights of the Federal Government. At that time, the Legislature believed that the Compact Commission could quickly negotiate final and complete water rights compacts with all Montana Tribal governments and with all land-holding federal agencies, and therefore set a statutory sunset date of 1984. Water rights negotiations proved to be more complex and time consuming than was originally believed.

B. Since 1979, the Legislature has extended the life of the Commission six times. The Confederated Salish and Kootenai Tribes actively supported legislative extension of the Commission in every instance that the Commission requested Tribal support.

C. Since 1979, the Commission has concluded final water rights settlements with six of the seven Tribal governments, and for the vast land holdings of the National Park Service, the Bureau of Land Management, the United States Forest Service, and the United States Fish and Wildlife Service, thereby settling water rights claims for millions of acres in Montana. On average, each Tribal compact took 5-6 years to complete. Several federal compacts took significantly more time. Because of these major undertakings, the Commission was too busy to focus on the Confederated Salish and Kootenai Tribes' water rights.

D. The state-wide Montana Water Court adjudication process was initiated in 1973. The State was divided into ninety adjudication basins. Prior to 1979, the Water Court issued final water rights decrees in six basins in Eastern Montana. Since that time, the Water Court has issued no additional final water right decrees. Furthermore, the Legislature has directed that those six early decrees be reopened under certain circumstances.

JUSTIFICATION FOR EXTENDING THE LIFE OF THE COMMISSION

E. Publicly available State financial information demonstrates that since 1980, the combined expenditures of the Water Court and of the Department of Natural Resources and Conservation ("DNRC") for assistance to the Water Court has cost the taxpayers of Montana approximately \$30,000,000.00 and has produced no truly final water right resolution. On the other hand, the Compact Commission has cost the taxpayers approximately \$10,000,000.00 and has settled water rights for millions of acres throughout Montana.

F. On a pure cost/benefit analysis, the effectiveness of the Compact Commission can not be contested. However, if the Commission is allowed to sunset in 2009, the litigation expense to the State, to the holders of the over 4,000 non-Indian claims to water on the Flathead Indian Reservation, to the Tribes, and to the United States will be astronomical and will take years to resolve.

G. Because the Tribes and the Commission are negotiating to resolve the Tribes' claims to water, holders of those 4,000 non-Indian claims have not been required

to spend time and money on lawyers, expert witnesses, and court costs to protect their claims. That is the job of the Commission.

H. A congressionally-ratified Tribal water rights compact affords Montana great protection against down-stream states' efforts to take Montana's water out of State.

JUSTIFICATION FOR EXTENDING TIME TO FILE WATER RIGHT CLAIMS

I. Under § 85-2-212, MCA, anyone claiming a pre-1973 water right was allowed up to three years to file a claim with the DNRC. This time frame applied even if a claimant had a single claim. When that 3-year grace period proved insufficient, the Legislature extended, under certain circumstance, the time to file for an additional 14 years. See, § 85-2-221(3), MCA.

J. If negotiations prove unsuccessful, the Tribes will be required to file multiple categories of water rights claims and many hundreds of claims within each category. Under current law, §§ 85-2-702 (3) and 704, MCA, the Tribes have only six months in which to file all of their water rights claims if negotiations end unsuccessfully.

K. A bill similar to Senate Bill 39 was introduced in the 2007 Legislative Session. During the course of testimony before the Senate Judiciary Committee, Chris Tweeten, the Chairman of the Compact Commission, suggested that rather than six months, the legislation should provide the Tribes sixty months after the termination of unsuccessful negotiations in which to file their water rights claims.



Flathead Joint Board of Control

P.O. Box 639
St. Ignatius, MT 59865
(406) 745-2090 • Fax (406) 745-3090

December 9, 2008

James H. Steele, Jr.
Tribal Council Chairman
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

Dear Mr. Steele,

The Flathead Joint Board of Control (FJBC) was one of the earliest supporters of extending the life of the Montana Reserved Water Rights Compact Commission (Compact Commission). While the FJBC would like to see a water rights Compact on the Flathead Indian Reservation successfully completed in the next couple of years, the FJBC has no objection to the proposed four-year extension of the Compact Commission.

The parties are working in good faith and are making excellent progress toward resolution of some difficult issues. We hope to be as supportive of this process as possible, as it moves forward. If there is anything that we can do to assist in this effort, please do not hesitate to ask us.

Sincerely,

Walt Schock, Chairman

CC: Jon Metropoulos



RECEIVED

JUN 12 2008

CS & KT TRIBE

Chair

Flathead Joint Board of Control

P.O. Box 639
St. Ignatius, MT 59865
(406) 745-2090 • Fax (406) 745-3090

June 10, 2008

Mr. James Steele, Jr.,
Tribal Council Chairman
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

Dear Chairman Steele,

Thank you for your letter of June 9, 2008. The Flathead Joint Board of Control (FJBC) is very encouraged by the substantial progress that the Confederated Salish and Kootenai Tribes and the State of Montana are making in compact negotiations to settle the water rights of the Flathead Indian Reservation. We appreciate the manner in which both parties have reached out to those who are not formally part of this process. The meetings we have had with Tribal staff on water rights issues have been very informative and we look forward to continuing that dialogue and receiving further information and details about the proposals being discussed by the Tribes and the State. As a result of the progress the parties have made, and in view of the CSKT expressed desire at the meeting last month in Polson to accelerate the process, the FJBC passed a motion at their regular monthly meeting yesterday to formally support the extension of the Compact Commission until July 1, 2011. We hope this will allow the parties to move forward in a judicious, yet expeditious way, toward completion of a Compact in time for approval by the 2011 Montana legislature.

Sincerely,

Walt Schock, Chairman



CITY OF POLSON P.O. Box 250 Polson, Montana 59860-0250 Telephone 406-883-8200 Fax 406-883-8238
CITY OF POLSON, 106 1st Street East, Polson, Montana 59860-2137 406-883-8200 Fax: 406-883-8238

July 24, 2008

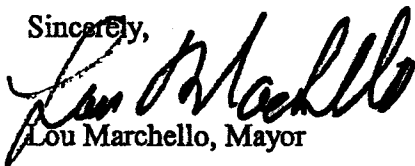
To Whom It May Concern:

I am the Mayor of the City of Polson, Montana, located on the Confederated Salish & Kootenai Tribes reservation.

The City Council, at its regular meeting on July 21, unanimously approved a vote to join with the Tribes in urging a four-year extension of the time period allotted in which to attempt to complete negotiations on the water rights compact. The City Council recognizes very well the importance of the subject and is confident that, given sufficient time, a workable negotiated resolution will result. We hope you will take under advisement the wishes of the citizens of this fair city in your decision.

Thank you for your time and attention.

Sincerely,



Lou Marchello, Mayor



PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

State-Tribal Relations Committee
60th Montana Legislature

SENATE MEMBERS

FRANK SMITH--Chair
DONALD STEINBEISSER--Vice Chair
RICK LAIBLE
JOE TROPILA

HOUSE MEMBERS

GORDON HENDRICK
JOEY JAYNE
KEN PETERSON
JONATHAN WINDY BOY

COMMITTEE STAFF

PAT MURDO, Lead Staff
JEREMY GERSONVITZ, Staff Attorney
DAWN FIELD, Secretary

August 22, 2008

Honorable Brian Schweitzer
Governor
State Capitol
PO Box 200801
Helena MT 59620-0801

James Steele, Jr.
Tribal Chairman
Confederated Salish and Kootenai Tribes
PO Box 278
Pablo MT 59855

Dear Governor Schweitzer and Chairman Steele:

We the undersigned members of the State-Tribal Relations Committee voted to support legislation extending the life of the Montana Reserved Water Rights Compact Commission [the Commission] through June 30, 2013, and the time allowed for the Confederated Salish and Kootenai Tribes to file their water rights claims from 6 months to 60 months subsequent either to termination of negotiations on a water compact or the 2013 sunset of the Commission.

The formulation of the Commission in 1979 was an innovative development that provides an alternative to the incredibly expensive and time-consuming process of litigating the water rights of Indian Tribes and of the United States. The history of the Commission demonstrates broad success in developing compacts with most of the Tribes and federal agencies within Montana. It also demonstrates that the original 3-year authorization for the Commission was a bit optimistic. The Legislature has passed legislation extending the life of the Commission six times since the original authorization. We understand the Confederated Salish and Kootenai Tribes were asked to support those legislative extensions, and did so willingly.

Negotiation is the way to go for many reasons. It allows locally created solutions to local problems. It is less expensive to the governments involved and for every single water rights claimant. It is less time consuming. It provides the State and the Tribes with flexibility while a court ruling never resolves all of the disputes.

Please support legislation in the 2009 Legislature to extend the life of the Commission and the time, if necessary, for the Tribes to file their water rights claims.

Sincerely,

Senator Frank Smith
State-Tribal Relations Presiding Officer

Representative Gordon Hendrick

Senator Joe Tropila

Representative Joey Jayne

Representative Jonathan Windy Boy

C10429 8242pmxb.

Clark Fork River Basin Task Force

C/O Gerald Mueller

440 Evans

Missoula, MT 59801

(406)543-0026

COPY

July 30, 2008

The Honorable Brian Schweitzer
Governor
State of Montana
P.O. Box 200801
Helena, MT 59620-0801

Dear Governor Schweitzer:

I write to you on behalf and at the request of the Clark Fork River Basin Task Force (Task Force) to urge you to support extending the life of the Montana Reserved Water Rights Compact Commission (Commission) beyond its current statutory sunset date of July 1, 2009.

The Task Force was created in 2001 pursuant to a statute passed because of concerns about the security of the water rights in the Clark Fork River basin and about the basin water supply and management. The statute that created the Task Force, 85-2-350 MCA, provided that its membership must be representative of all watersheds and viewpoints in the basin. A list of current members, all of whom represent water users, is enclosed. This same 2001 statute also directed the Task Force to write a watershed management plan for the entire Clark Fork River basin. The plan had to identify options for protecting the security of existing basin water rights and provide for the development and conservation of basin water in the future. The Task Force completed the plan, the *Clark Fork Basin Watershed Management Plan*, in September 2004 and presented it the Governor and the Legislature. Much of the *Plan* was subsequently adopted into the State Water Plan. In 2005, the legislature provided for continuing the Task Force and in that year and 2007 appropriated funds to support its activities.

A key unresolved issue in the basin is the nature and extent of reserved water rights of the Confederated Salish and Kootenai Tribes (Tribes). These rights will be the most senior rights in the basin. By order of the Montana Supreme Court, all state water right permitting activity on the 1.317 million acre Flathead Reservation located in the heart of the basin is halted until the Tribes' water rights have been determined.

The Commission and CS&KT are currently negotiating a compact that to settle the Tribes' water rights and provide a mechanism to manage them. Spokespersons for both the Tribes and the Commission have stated publicly that significant progress is being made in these negotiations but they are unlikely to be completed by the Commission sunset date, July 1, 2009. If the Commission is allowed to sunset and some other means for negotiating a settlement with the Tribes is not provided, then by statute the Tribes must proceed within six months to litigation before the Montana Water Court.

Clark Fork River Basin Task Force

Name	Organization	Area/Interest Represented
Marc Spratt	RLK Hydro	Flathead Basin above Flathead Lake
Nate Hall	Avista	Hydropower Utilities
Holly Franz	PPL Montana	Hydropower Utilities
Gail Patton	Sanders County Commissioner	Basin Local Governments
Arvid Hiller	Mountain Water Company	Municipal water companies and the Clark Fork River Watershed between the confluence of the Blackfoot River and the Clark Fork River and the confluence of the Clark Fork River and the Flathead River
Caryn Miske	Flathead Basin Commission	Flathead Lake
Ted Williams	Flathead Lakers	Flathead Lake
Steve Hughes	Joint Board of Control	Flathead River watershed below Flathead Lake to the confluence with the Clark Fork River
Harvey Hackett	Bitter Root Water Forum	Bitterroot River watershed
Fred Lurie	Blackfoot Challenge	Blackfoot River watershed
Jim Dinsmore	Granite Conservation District & Upper Clark Fork River Basin Steering Committee	upper Clark Fork River watershed
Verdell Jackson, <i>Ex Officio</i>	State Representative	Senate District 5

RECEIVED

MISSOULA
COUNTY



OCT 01 2008

NATURAL RESOURCES
DEPARTMENT

BCC 2008-217
September 17, 2008

BOARD OF COUNTY COMMISSIONERS
200 W BROADWAY
MISSOULA MT 59802-421

PHONE: (406) 258-487
FAX: (406) 721-407

RECEIVED

SEP 22 2008

CS&KT

Mr. James Steele, Jr., Chairman
The Confederated Salish and Kootenai Tribes of the Flathead Nation
P.O. Box 278
Pablo, MT 59855

Dear Chairman Steele:

The Board of County Commissioners wishes to thank you for your letter regarding the Montana Reserved Water Rights Compact Commission and their active discussions with the Tribes regarding water rights in the greater Flathead Indian Reservation. We are encouraged to learn that those talks are progressing and we strongly encourage all parties to continue to work toward a resolution of this important and often controversial issue.

We unanimously support continued discussions of the Compact Commission and will urge the Montana Legislature and all interested parties to work toward a successful conclusion in those meetings. Given the importance of this issue and the progress made by the Commission to date on a state-wide basis, we are extremely hopeful that the July 1, 2009 "closing date" that you mentioned in your letter will be met and the appropriate authorization from the State and Congress will be acquired.

In the event that a July 1, 2009 end to the negotiations does not appear likely, we will support a request by the Tribes to extend that deadline. Until that time, we commend you and your staff for their hard work and dedication to finding a fair and equitable solution to the water rights dilemma facing all of our citizens.

If you have any questions, please feel free to contact us or our Rural Initiatives staff at 406-258-4981.

Sincerely,
BOARD OF COUNTY COMMISSIONERS

NOT AVAILABLE FOR SIGNATURE

Jean Curtiss, Chair


Bill Carey, Commissioner


Larry Anderson, Commissioner

BCC/ppr

cc: Susan Cottingham, Program Manager,
Montana Reserved Water Rights Compact Commission

Flathead County
Board of Commissioners

(406) 758-5503

Joseph D. Brenneman
Gary D. Hall
Dale W. Lauman



November 13, 2008

Chairman James H. Steele, Jr.
The Confederated Salish & Kootenai
Tribes of the Flathead Reservation
P. O. Box 278
Pablo, Montana 59855

RE: Tribal Reserved Water Right Negotiations

Chairman Steele:

Thank you very much for taking the time to visit the Flathead County Board of Commissioners and present information regarding the positive progress experienced in the recent negotiations to settle tribal water rights. The Board fully supports the efforts to resolve these important issues through negotiations rather than litigation.

It is important to the residents of Flathead County that these uncertainties regarding water rights be resolved. As long as significant progress is being made in the negotiation process, as evidenced in the last year, the Board supports the legislative request to extend the Montana Reserved Water Rights Compact beyond the present expiration date.

Again, we thank you for your willingness to come to Flathead County to apprise us of this important matter and we wish you and your negotiation team the very best in this daunting task.

Sincerely,
FLATHEAD COUNTY
BOARD OF COMMISSIONERS

A handwritten signature of Gary D. Hall in dark ink, written over a horizontal line.

Gary D. Hall, Chairman

A handwritten signature of Dale W. Lauman in dark ink, written over a horizontal line.

Dale W. Lauman, Member

A handwritten signature of Joseph D. Brenneman in dark ink, written over a horizontal line.

Joseph D. Brenneman, Member

CBC:ecr

Fort Belknap Indian Community

R.R. 1, Box 66
Fort Belknap Agency
Harlem, Montana 59526

PH: (406) 353-2205

FAX: Council - (406) 353-4541

FAX: Departments - (406) 353-2797

January 5, 2009



Fort Belknap Indian Community
(Haud Oka)
Fort Belknap Indian Community
(elected to administer the affairs of the community and
to represent the Administration and the Great Northern
Trust of the Fort Belknap Indian Reservation)

Chairman James H. Steele, Jr.
The Confederated Salish and Kootenai Tribes
of the Flathead Reservation
P. O. Box 278
Pablo, Montana 59855

RE: Tribal Reserved Water Rights Negotiations -- Letter of Support for Extension of Compact and Commission

Dear Chairman Steele:

Thank you for visiting with the Tribes about the positive progress made in the recent negotiations to settle tribal water rights on the Flathead Indian Reservation. Tribes are hopeful knowing the positive experience you have had to date to resolve these important matters. The Fort Belknap Indian Community fully supports the efforts to resolve these important issues through negotiations rather than litigation.

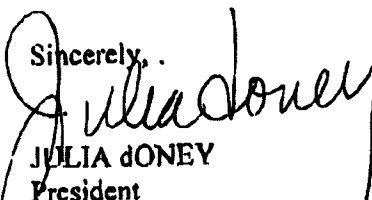
Making meaningful progress in this manner is important to all Montana Tribes. As long as significant progress is being made, as evidenced in the last year, the Fort Belknap Indian Community supports the legislative request to extend the Montana Reserved Water Rights Compact for an additional four years.

Again, the Fort Belknap Indian Community wants to thank the CSKT for keeping us updated and to thank the compact commission for working in such a positive manner to seek mutual resolution.

Please provide a copy of this letter to the CSKT Natural Resources Committee during the January 7, 2009 hearing on this issue so they know of our support for continued efforts and the extension of the commission.

We wish you and the negotiation team the very best in this daunting task. Please do not hesitate to contact me if I can provide further support.

Sincerely,


JULIA DONEY
President

Xc. file

406 477 0210

Northern Cheyenne Trib

10 13 54 a m

12 31-2008

2/2

**NORTHERN CHEYENNE TRIBE****ADMINISTRATION**

P.O. BOX 128

LAME DEER, MONTANA 59043

(406) 477-6284

FAX (406) 477-6210



December 30, 2008

Chairman James H. Steele, Jr.
The Confederated Salish and Kootenai Tribes
of the Flathead Reservation
P. O. Box 278
Pablo, Montana 59855

RE: Tribal Reserved Water Rights Negotiations - Letter of Support for Extension
of Compact Commission

Dear Chairman Steele:

Thank you for visiting with the Tribes about the positive progress made in the recent negotiations to settle Tribal Water Rights on the Flathead Indian Reservation. Our Tribes are hopeful knowing the positive experience you have had to date to resolve these important matters. The Northern Cheyenne Tribe fully supports the efforts to resolve these important issues through negotiations rather than litigation.

Making meaningful progress in this manner is important to all Montana Tribes. As long as significant progress is being made, as evidenced in the last year, the Northern Cheyenne Tribe supports the legislative request to extend the Montana Reserved Water Rights Compact for an additional four years.

Again, the Northern Cheyenne tribe wants to thank the CSKT for keeping us updated and to thank the compact commission for working in such a positive manner seeking mutual resolution.

Please provide a copy of this letter to the Natural Resources Committee during the hearing on this issue on January 7, 2009 so they know of our support for past efforts and the extension of the commission.

We wish you and the negotiation team the very best in this daunting task.

Sincerely,

Leroy Spang
President

**LITTLE WOLF AND MORNING STAR - Out of defeat and exile they led us back
to Montana and won our Cheyenne homeland that we will keep forever.**

FORT PECK TRIBES

Assiniboine & Sioux

January 02, 2009

Chairman James H. Steele, Jr.
The Confederated Salish and Kootenai Tribes
of the Flathead Reservation
P.O. Box 278
Pablo, Montana 59855

RE: Tribal Reserved Water Rights Negotiations – Letter of Support for Extension of Compact Commission.

Dear Chairman Steele:

Thank you for visiting with the Tribes about the positive progress made in the recent negotiations to settle Tribal Water Rights on the Flathead Indian Reservation. Our Tribes are hopeful knowing the positive experience you have had to date to resolve these important matters. The Fort Peck Tribes fully supports the efforts to resolve these important issues through negotiations rather than litigation.

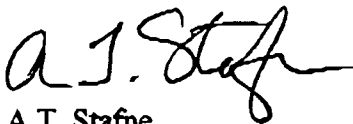
Making meaningful progress in this manner is important to all Montana Tribes. As long as significant progress is being made, as evidenced in the last year, the Fort Peck Tribes supports the legislative request to extend the Montana Reserved Water Rights Compact for an additional four years.

Again, the Fort Peck Tribes wants to thank the CSKT for keeping us updated and to thank the compact commission for working in such a positive manner seeking mutual resolution.

Please provide a copy of this letter to the Natural Resources Committee during the hearing on this issue on January 07, 2009 so they know of our support for past efforts and the extension of the commission.

We wish you and the negotiation team the very best in this daunting task.

Sincerely,



A.T. Stafne
Chairman
Fort Peck Tribal Executive Board

The Chippewa Cree Tribe of the Rocky Boy's Reservation

Phone: (406) 395-4478 or 4210 - Finance Office
(406) 395-4282 or 4321 - Business Committee
January 5, 2008

RR 1 #544
Box Elder, MT 59521

Honorable Chairman James Steele, Jr.
Confederated Salish & Kootenai Tribes
P.O. Box 278
Pablo, Montana 59855

RE: Tribal Reserved Water Rights Negotiations-Letter of Support for Extension of Compact Commission

Dear Honorable Chairman Steele:

On behalf of the Chippewa Cree Tribe I would like to thank you for keeping us updated on the positive progress made in the recent negotiations to settle Tribal Water Rights on the Flathead Indian Reservation. We understand that the progress to date has been productive and believe that you will eventually receive a settlement that resolves all outstanding issues. The Chippewa Cree Tribe fully supports the efforts to resolve these important issues through negotiations rather than litigation.

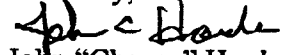
In fact, making meaningful progress in this manner is important to all Montana tribes. With that being said, the Chippewa Cree Tribe wholeheartedly supports the legislative request to extend the Montana Reserved Water Rights Compact for an additional four years.

Again, the Chippewa Cree Tribe wants to thank you and the Confederated Salish & Kootenai Tribes for keeping us updated and to thank the compact commission for working in such a positive manner seeking mutual resolution to this most important issue.

Please remit a copy of this letter to the Natural Resource Committee during the hearing on this issue on January 7, 2009 to ensure they understand our tribes' support and commitment to the efforts being undertaken to resolve this in a diligent yet positive way.

Our tribe wishes you and the negotiation team the best of luck in resolving this most significant issue.

Sincerely,


John "Chance" Houle
Chairman